

C.A. No. 9:21-479-RMG

C.A. No. 9:22-1874-RMG

C.A. No. 9:23-426

Defendants.

ORDER

The Court has before it the above captioned cases, which include some overlapping claims and/or parties. This Court granted a motion to dismiss the federal claims in C.A. No. 9:21-479-RMG on the basis that none of the defendants were state actors or employees. (Dkt. No. 53). Plaintiff argued in opposition to the motion to dismiss that adoption was an exclusive state function and the defendants, a private entity and an employee of the private entity, should be deemed state actors. Plaintiff appealed the Court's order dismissing the federal claim. The Fourth Circuit vacated and remanded the Court's order, raising *sua sponte* another theory of potential Fourteenth Amendment liability on the basis that Plaintiff, upon the termination of her parents' parental rights, became a ward of the State of Ohio and was entitled to constitutional protections while in state custody. *E.R.L. vs. Adoption Advocacy, Inc.*, No. 21-1980, 2023 WL 1990300 (4th Cir. Feb. 14, 2023). This raised the prospect that the defendants became state actors when they were given the responsibility of handling the adoption of the minor plaintiff. Since plaintiff did not raise or brief this alternative theory of liability, the Court did not address it in its order granting the motion to dismiss the federal claims. Now that the case has been remanded to address this new theory of liability, the parties will be given the opportunity to brief this issue.

While C.A. No. 9:21-479-RMG was on appeal, Plaintiff's counsel filed a new complaint in C.A. No. 9:22-1874-RMG, naming over 40 defendants and alleging 25 causes of action. The Court issued an order on January 31, 2023, dismissing some claims, severing other claims, remanding certain state claims to state court, and retaining under C.A. No. 9:22-1874-RMG 11 causes of action related to the adoption and supervision of four minor plaintiffs. (Dkt. No. 90). The plaintiff in C.A. No. 9:21-479-RMG is one of the four plaintiffs in C.A. No. 9:22-1874-RMG.

The Court stayed C.A. Nos. 9:22-1874-RMG and 9:23-426-RMG pending a decision in the Fourth Circuit appeal in C.A. No. 9:21-479-RMG.

The Court now orders and directs as follows:

1. The stay issued for C.A. Nos. 9:22-1874-RMG and 9:23-426¹ is lifted.
2. In light of the overlapping factual and legal issues raised in 9:22-1874-RMG and 9:21-479-RMG, the Court will conduct a joint status conference in these cases on February 28, 2023 at 3:00 p.m. in the J. Waties Waring Federal Judicial Center. The Court will address the following issues at the status conference:
 - A. A plan to address the issue remanded to the Court by the Fourth Circuit in *E.R.L. vs. Adoption Advocacy, Inc.*;
 - B. A scheduling order for C.A. No. 9:22-1874-RMG;
 - C. Whether C.A. No. 9:22-1874-RMG and 9:21-479-RMG should be consolidated under Rule 42 of the Federal Rules of Civil Procedure;
 - D. The status of the RICO claim in C.A. No. 9:23-426-RMG;
 - E. Whether Plaintiff needs to submit an amended complaint in 9:22-1874-RMG to reflect legal developments since the filing of the amended complaint (Dkt. No. 53) on August 3, 2022; and
 - F. Any other additional issues the Court or the parties seek to address.

¹ C.A. No. 9:23-426-RMG is a new civil action number regarding claims severed from C.A. No. 9:22-1874-RMG against Defendant Wright Directions LLC and certain of its employees.

AND IT IS SO ORDERED.

s/Richard Mark Gergel
Richard Mark Gergel
United States District Judge

February 22, 2023
Charleston, South Carolina